IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8881 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

M P ARTS AND M H COMMERCE COLLEGE

Versus

KANJIBHAI NAGARBHAI PATEL

Appearance:

MR AJ SHASTRI for Petitioners

MR SP HASURKAR for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/01/98

ORAL JUDGMENT

The respondents No.2 & 3 are not the necessary or proper parties to this Special Civil Application and as such their names are ordered to be deleted. The office is directed to make necessary endorsement to this effect in the cause title of the Special Civil Application.

2. Rule. Shri S.P.Hasurkar waives service of Rule

on behalf of respondent. On the request of learned counsel for the parties, the matter is taken up for final hearing today.

3. The facts of the case, in brief, are that the respondent who was working as a lecturer in the petitioner's college, was to retire on attaining the age of superannuation of 58 years on 2.9.97. He prayed to the Gujarat Affiliated Colleges Service Tribunal at Ahmedabad, earlier to the aforesaid date and claim has been made that he is entitled to continue in service till he attains the age of 60 years. On 24th October 1997, the learned Tribunal granted interim relief in favour of the respondent and it has been ordered that the petitioner-college should continue the respondent to work upto the final hearing of this application. This order is challenged by the petitioner before this Court.

4. The learned counsel for the petitioner contended that the Tribunal has in fact, decided the application itself finally at the stage of grant of interim relief. He read para-7 of the order impugned in this Special Civil Application. It has next been contended that even if it is considered that the respondent has prima-facie case in his favour, then too, the Tribunal has to consider the further two aspects, whether declining of interim relief will cause any irreparable injury to the respondent which cannot be compensated in terms of money and further that the balance of convenience favours grant of interim relief in favour of respondent. That aspect has not been gone into by the Tribunal and it has decided the matter finally by granting interim relief. Lastly, the learned counsel for the petitioner contended that the Tribunal, while deciding the question of interim relief should not grant the relief which normally should be granted at the final stage. In fact, under the impugned order, the final relief has been granted to the respondent and nothing now remains to be decided in the application itself.

5. On the other hand, the learned counsel for the respondent contended that it is an interlocutory order and as such, this Court may not interfere in the matter. It has next been contended that this petition is filed by petitioner under Article 226 and 227 of the Constitution of India and even if the order impugned in this Special Civil Application is erroneous, still this Court may not make any interference. Reliance in this respect has been placed in the decision of the Apex Court, reported in AIR 1984 SC 34. Lastly, the learned counsel for the respondent contended that the Tribunal has found that the

case of the respondent is covered under Ordinance No.172 read with Ordinance No.97 of the Gujarat University and only then the interim relief has been granted. Otherwise, the respondent would have been rendered jobless. One more contention has been made that it is rather in the interest of the institution to continue the respondent in service, otherwise in case ultimately the respondent succeeds then the institution has to make double payment, i.e. to the petitioner as well as to the other person who has to be appointed in place of the petitioner. Further, the learned counsel for the petitioner contended that the matter is fixed for final hearing on 17.2.98 and as such, this Court, instead of interfering in the impugned order, may give directions to the Tribunal to decide the matter finally at an early date.

6. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

7. The dispute in this case is, what should be the age of superannuation of the petitioner, i.e. 58 years or 60 years. I find sufficient merits in the contention of the learned counsel for the petitioner that under the impugned order, the Tribunal, at the stage of considering the case for grant of interim relief, has decided the matter finally. It is no more res-integra that grant of the final relief in the form of interim relief or interim order is not permissible. Reference in this respect may have to the decision of the Apex Court in the case of State of U.P. v. Vishweshwar, reported in 1995 (Suppli.)(3) SCC 590. Reference in this respect may have to another decision of the Apex Court in the case of Bank of Maharashtra v. Race Shipping Co., reported in AIR 1995 SC 1368, where their Lordships of the Supreme Court held that interim order should not have been in a form of giving of the principal relief in substance in the petition. Grant of principal relief, as prayed for in the writ petition, by way of interim relief, was deprecated by the Apex Court in the aforesaid case. Reference may have to yet another decision of the Apex Court in the case of Bharat Bhusan Soneji v. Abdul K.Mohd. reported in 1995(Suppli.)(2) SCC 593. Their Lordships of the Apex Court have held that the interim order passed pending writ petition having effect of allowing the writ petition itself is not proper. In the case of Commissioner/ Secretary, Government S & M.E.Deptt. v. Ashok K. Kohli, reported in 1995 (Suppli.)(4) SCC 214, their Lordships of the Supreme Court held that the interim order should not amount to overreaching the main relief which ultimately may or may

not be passed in the writ petition. Further reference may have to the case of Secretary and Home Commissioner v. Kirupankar, reported in AIR 1994(1) (Suppli.) SCC 155. That matter pertained the case of correction of the date of birth of the employee and their Lordships of the Supreme Court held that the Tribunal or the Court should be slow to grant interim relief of continuation in service of the employee. In the case of P.R.Sinha v. Inder Krishnan, reported in 1996(1) SCC 681, their Lordships, Supreme Court, have observed that the High Court should not pass the interim order, the nature of which is to grant a relief which can be granted only at the final disposal of such a writ petition. This Court, in the case of High Court of Gujarat v. B.J.Patel, reported in 1997(2) G.L.R. 1660, has laid down the principles which are to be adhered to while considering the matter for grant of interim relief. One and the foremost consideration should have been whether the decline of interim relief as prayed for will result in causing of irreparable injury to the party which cannot be compensated in terms of money ?

8. If we go by the facts of this case, the respondent has made grievance that he should have been retired at the age of 60 years instead of 58 years. So the question is whether the petitioner should continue the respondent in service upto the age of 60 years or he should be retired at the age of 58 years. In case the respondent is retired at the age of 58 years and ultimately if he succeeds in the application filed before the Tribunal, then certainly he can be compensated for the loss of salary which he suffered. Non continuation of the respondent on the post in such matter will certainly not cause any irreparable injury to him which cannot be compensated. The respondent will not be put in a condition of irretrival character by declining the interim relief in such matters. The respondent will get all the benefits if ultimately his plea is accepted, but contrary to it, if the respondent is allowed to continue in service and ultimately if he loses, then it may be difficult in such a case to order for refund of the salary which has already been paid. One more aspect has to be considered. By continuing the petitioner, the other person who is likely to be appointed in his place will be deprived of the employment for that period. Reference may advantageously have to one more decision of the Hon'ble Supreme Court, an order passed on November 21, 1995, in the case of Sr.Horticulturist & Anr. v. Mallaiah, in Petition for Special Leave (Civil) No.13382 of 1995, wherein the dispute was regarding the date of birth of the respondent-therein, and he was protected by

the Tribunal by grant of interim relief, and in the meanwhile he attained the age of superannuation, and ultimately he withdrew the appeal. In that factual background, the matter has been taken up by the Appellant therein before the Hon'ble Supreme Court and I could not do better than to reproduce the relevant observations of the Court made in the decision aforesaid, which are as under:

> ....This shows how the process can be abused by obtaining an interim order and thereafter allowing the petition to lapse after the purpose is served. Even before us in response to the notice the respondent has not chosen to appear because he has reaped the benefit of the interim order. We had an occasion in Burn Standard Co.Ltd. & Ors. v. Shri Dinabandhu Majumdar & Anr. (JT 1995(4) SC 23) to make a detailed order in such cases. It is necessary to emphasize that in such cases irreparable damage is caused to the institution which cannot be put back even if the employee is wrong in his contention. If the employee is allowed to reap the benefit through an interim order without a final adjudication by the Tribunal or High Court, as the case may be, it would tantamount to permitting the employee to abuse the process of the Tribunal/Court. That is the reason why in the aforementioned judgment we had emphasized that the Tribunal/Court should be slow in granting interim injunctions in such cases because it would not cause any hardship to the employee even if he is allowed to retire on the original birth date for the obvious reason that if he succeeds he can always get the monetary benefits to which he would have been entitled, had he not been retired earlier in point of time. In the decision mentioned above, this Court had observed that it would be imprudent on the part of the High Courts to allow interim relief to such an employee for continuance in service. The same principle would apply where the Tribunal is exercising jurisdiction. We would once again draw the attention of the Tribunal/ High Courts in this behalf. We direct that a copy of this order alongwith a copy of the judgment in Burn Standard Co. case be circulated to the High Courts as well as the Tribunals.
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> As stated earlier, we do not interfere with the impugned order insofar as the respondent is

concerned since it is an individuals's case, but we would like to clarify that the respondent would be entitled to pension as per rules only. The special leave petition is disposed of accordingly.

9. I am constrained to observe that the Tribunal while granting the interim relief in favour of the petitioner has altogether ignored the well settled principles which are to be adhered to while considering the grant of interim relief in view of the position of law as settled and the fact that the respondent will not suffer any irreparable injury or it would not cause any damage to him in case interim relief is declined to him in the present case. The order of the Tribunal impugned in this Special Civil Application cannot be allowed to stand. In the result, this Special Civil Application succeeds and the same is allowed and the order of the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad dated 24th October 1997, passed in Application No.56 of 1997 is quashed and set aside. Rule made absolute in aforesaid terms.

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(sunil)